

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 87-223-E - ORDER NO. 2002-740

OCTOBER 18, 2002

IN RE: Least-Cost Planning Procedure for Electric Utilities under the Jurisdiction of the South Carolina Public Service Commission.))))	ORDER HOLDING DUKE FERC FORM NO. 715 FILING AS CONFIDENTIAL
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*✓ 10/18/02
✓ 10/20/02*

This matter comes before the Public Service Commission of South Carolina (the Commission) on the request of Duke Energy Corporation (Duke or the Company) for confidential treatment of its recent Federal Energy Regulatory Commission (FERC) Form 715 filing (Annual Transmission Planning and Evaluation Report) with this Commission. This is in response to a recent FERC determination that the annual FERC Form 715 filings contain “critical energy infrastructure information” that should be kept confidential and non-public.

We grant confidential treatment of the document, based on the following reasoning. On August 1, 2002, FERC issued its “Order on Interim Treatment of Information Collected in Form No. 715.” That Order indeed recognized certain specifications of energy facilities and other materials contained in that report as “critical energy infrastructure information,” and therefore determined that certain parts of the Form would be kept confidential, and other non-confidential parts would be available to the public on FERC’s website.

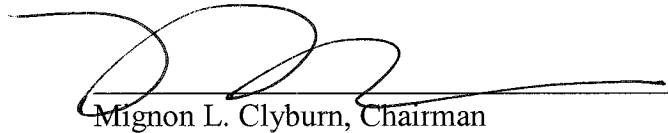
The basis for the withholding of certain parts of Form No. 715 was stated by FERC as being the Federal Freedom of Information Act Exemption 7(F), which allows withholding “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information...could reasonably be expected to endanger the life or physical safety of any individual.” 5 U.S.C. Section 552(b)(7)(F). FERC held that information deemed “critical energy infrastructure information” obtained by someone with ill intent could potentially cause catastrophic loss of life, and therefore represents the type of information that may be withheld under Exemption 7(F). This Order was deemed by FERC to be an interim Order, subject to a final ruling.

Accordingly, Duke requests that this Commission recognize the Federal Freedom of Information Act exemption at this time, and keep the FERC Form No. 715 confidential. We agree that this is the appropriate treatment. We believe that the question involved is a Federal one, that is, whether “critical energy infrastructure information” in the hands of the wrong parties, such as terrorists, could cause loss of life on a grand scale. Terrorism is a national, and, therefore, a Federal concern, which we recognize. Therefore, we hold that recognition of the determination of the Federal Energy Regulatory Commission and the use of the Federal Freedom of Information Act Exemption 7 (F) is appropriate and proper, and we adopt the reasoning of the FERC and its August 1, 2002 Order on the matter as our own. The entire report shall be kept confidential at the Public Service Commission of South Carolina, since we do not know with precision all the areas of concern in the report, and because of the fact that FERC has made the determination of

what should be the public part of Form No. 715, and has made that material available to the public on the FERC website.

Should the FERC issue a new opinion on the matter in its final Order on the subject, this Commission may certainly revisit the confidentiality issue presented herein. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn, Chairman

ATTEST:



Gary E. Walsh, Executive Director

(SEAL)